IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12938 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUKESH CHINUBHAI NAYAK

Versus

CHIEF OFFICER, VISNAAGR NAGAR PALIKA

Appearance:

1. Special Civil Application No. 12938 of 2003

MR GAURANG K PATEL for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1-2

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 08/10/2004

ORAL JUDGEMENT

1. By way of this petition the petitioner has prayed for a direction to the respondents to enter/ register the

name in the register maintained under the provisions of Registration of Birth and Death Act, 1969 and to issue fresh amended certificate to the petitioner incorporating the name of the petitioner as "Mukesh Chinubhai Nayak".

2.0 The facts of the case as emerging from the record are as under:

2.1 The petitioner was born on 25th November, 1956 at Visnagar. At that time necessary entry was made in the register maintained by the respondents under the provisions of Registration of Birth and Death Act, 1969 (the Act for short). According to the petitioner though the birth of the petitioner came to be registered with the office of the Visnagar Nagarpalika at Birth Registration No.914 in the Birth records, the same could not be registered in the register maintained by the respondents, due to oversight. Thereafter the petitioner made an application dated 7th February, 2003, to the Chief Officer, Visnagarpalika for registration of the name in the records of the respondents and also to issue certificate of Birth stating his correct name. This request was not acceded to by the respondents and, therefore, the present petition is filed.

3. Heard the learned counsel for the respective parties. Learned counsel for the petitioner relied upon a decision of this Court in the case of Dr. Sukumar Vs. District Registrar, Births & Deaths, reported in 1993(1) GLR 93, wherein while considering sections 14, 15 and 16 of the said Act it is held that there is a power to correct an entry incorrectly made.

3.1 Learned counsel next relied upon a decision of this Court in the case of B.K. Suthar Vs. State and Another, reported in 1983(2) GLR 932 wherein it is held as under:

> "On a plain reading of rule 171 of the Bombay Civil Services Rules, it is manifestly clear that the government servant has a right to the correction of entry either on the ground of apparent clerical error or any other ground including the ground of want of care on the part of the person responsible for making the entry. The rule nowhere provides for any limitation or making such an application for correction of entry. It is, therefore, beyond the powers and the authority of the government to introduce a rule of limitation by an executive direction contained in the Government resolution since the Bombay Civil Services Rules are Rules enacted in

exercise of powers conferred by proviso to Art.309 of the Constitution of India."

3.2 Learned counsel for the petitioner next relied upon a decision in the case of Mulla Faizal Vs. State, reported in 2002(2) GLR 1553 wherein it is held that the authorities, under the provisions of section 15 read with Rule 12 of the Rules framed thereunder, are duty-bound in law to make necessary enquiries and if necessary to obtain medical opinion to grant change of entry in the Birth register regarding the sex of the appellant and to issue to him a corrected birth certificate.

3.3 Learned counsel for the petitioner also relied upon a decision in the case of Vimal M. Patel Vs. State of Gujarat, reported in 2001(3) GLR 2484, wherein it is held that the Registrar is entitled to hold an inquiry for this purpose and on the basis of material on record he is not powerless to make correct entries.

3.4 Learned counsel for the petitioner also relied upon a decision in the case of Dipika Arvindkumar Pancholi Vs. State of Gujarat and Another, reported in 2003(1) GLR 515, wherein it is held that since the statute is silent, it is the case of casus omissi, i.e. circumstances concerning which the Act is silent, and therefore the powers envisaged under Rule 11 can be extended to enter the name even after a period 15 years.

3.5 Learned counsel for the petitioner also relied upon a decision of the Division Bench of this Court in Letters Patent Appeal No.231 of 2001, wherein it is held that no direction can be issued by any authority to take away the powers of the Registrar of making correction in entries which are erroneous in form or substance in the Register.

4. Learned counsel for the respondent is not able to contest the aforesaid settled law.

5. In the premises, the petition is partly allowed. The respondent authority is directed to entertain the application submitted by the petitioner for entering/ registering his name in the Register maintained under the provisions of Registration of Births & Deaths Act, 1969 within a period of four weeks from the date of receipt of writ of this Court. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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